

**MF 08-4**

**Tax Type: Motor Fuel Use Tax**

**Issue: Failure To Have Motor Fuel Use Tax Decal/Permit**

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

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) 00-00000

) NTL: 00-000000 0

v.

)

) Mimi Brin

**ABC BROTHERS**

) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue; Mr. John Doe for the ABC Brothers

**Synopsis:**

This matter comes on for hearing pursuant to the timely protest by the taxpayer, ABC Brothers ("taxpayer") to Notice of Tax Liability for Motor Fuel Use Tax 00-000000 0 ("NTL") issued by the Department on May 10, 2007 as a result of taxpayer's operation of a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying required decals or without a valid single-trip permit. Taxpayer, through John Doe ("Doe"), appeared for hearing via telephone and Doe testified thereat. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department issued to taxpayer NTL 00-000000 0, assessing a penalty of \$1,000 based upon taxpayer's operation of a commercial motor vehicle in Illinois without, inter alia, a valid Illinois motor fuel use tax license or IFTA license or a valid single-trip permit. Department Ex. No. 1
2. Taxpayer is a farmer located in Wisconsin about 12 miles from the Illinois border. Transcript ("Tr.") p. 12
3. Beginning in the previous year, taxpayer rented land in Illinois to farm, requiring it to drive its semi-trucks into Illinois. *Id.* at 14
4. On April 25, 2007, someone working for taxpayer drove taxpayer's red three-axle semi-tractor trailer in Illinois. Department Ex. No. 1
5. On that day, taxpayer concedes that it did not have an IFTA license or a single trip permit for that vehicle. Tr. p. 14
6. On that day, taxpayer received a "Written Warning" from a police officer for its failure to have a valid motor fuel use tax license or permit. Department Ex. No. 1

**Conclusions of Law:**

The Motor Fuel Tax Law, 35 ILCS 505/1 *et seq.*, ("MFTL") provides that "...no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." *Id.* at 505/13a.4. As an alternative to the license and decals otherwise required, the MFTL allows "a commercial motor vehicle operated in Illinois in the course of interstate traffic by a motor

carrier not holding a motor fuel use tax license” to obtain “a single trip permit authorizing operation of such commercial motor vehicle for a single trip through the State of Illinois, or from a point on the border of this State to a point within and return to the border... .” Id. at 505/13a.5. Such a single trip permit is “valid for a period of 72 hours.” Id. The MFTL defines “commercial motor vehicle” as “a motor vehicle used, designed, or maintained for the transportation of persons or property” and “having 3 or more axles regardless of weight.” Id. at 505/1.16. This definition does not qualify a commercial motor vehicle by the economics relating to its operation, but rather, by its physical form. See tr. p. 12 (Doe defining commercial motor vehicle as one that is making money as it drives down the road).

Mr. Doe admits that taxpayer does own a red, three-axle semi-tractor trailer truck and he could not refute that this vehicle was the one that was operating in Illinois without an appropriate license or single trip permit on the pertinent date. This vehicle falls four-square within the definition of a commercial motor vehicle subject to the mandates of the MFTL.

Mr. Doe testified that he did not know of the need to obtain a motor fuel license, decal or single trip permit, explaining that he had only recently begun coming into Illinois for farming purposes. Tr. pp. 9, 14. He related that his business has always been with Iowa, and that Wisconsin and Iowa have an agreement that if vehicles do not go beyond 35 miles into each respective state, an IFTA license is not necessary. Unfortunately, however, Illinois has no such agreement with Wisconsin.

No one suggests that taxpayer deliberately avoided obtaining the necessary license, decal or single trip permit. However, the law does not provide a remedy to it based upon its lack of knowledge. The pertinent provision in the MFTL reads as follows:

if a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displaying decals required by Section 13a.4 or without a valid single trip permit when required by Section 13a.5 of the Act or a valid 30-day International Fuel Tax Agreement temporary permit, the operator must pay a minimum of \$1,000 as a penalty.

35 ILCS 505/13a.6(b)

Ignorance of the law is not recognized as an excuse for non-compliance with tax laws. DuMont Ventilation Co. v. Department of Revenue, 99 Ill. App.3d 263 (3<sup>rd</sup> Dist. 1981). Nor does the law require that once warned or cited, a taxpayer has a right to correct its failure to have the appropriate license or permit before the instant penalty applies, as argued by the taxpayer. There is also no provision in the MFTL for abatement of the penalty, in this specific forum, for reasonable cause or “extenuating circumstances” as suggested by the taxpayer. Since there is no question that taxpayer operated its commercial motor vehicle truck in Illinois without a mandated license or permit, the penalty applies.

**WHEREFORE**, for the reasons stated above, it is my recommendation that this Notice of Tax Liability be finalized as issued.

1/31/08

Mimi Brin  
Administrative Law Judge